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MEGHAN DUBE v. PRAN SINGH.

in favour of a joint family and not of a minor. We may also observe that the defendants did not raise the plea in their written statement that the contract was void. That being so, we think there is no force in the first plea taken in the memorandum of appeal.

It is next urged that the Court below ought not to have remanded the case under section 562 of the Code of Civil Procedure, because the Court of first instance has not decided the suit upon a preliminary point. We think the ruling in *Mata Din* v. *Jamna Das* (1), on which the Court below relies, is applicable to the case, and justifies the action of that Court, specially as no new issues have to be framed, but only such of the issues as the first Court left entirely undecided are now to be determined. We dismiss the appeal with costs.

Appeal dismissed.

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December 5

FULL BENCH.

Before Mr. Justice Sir George Knox, Mr. Justice Banerji and Mr. Justice Richards.

IN THE MATTER OF THE PETITION OF ANANT RAM AND OTHERS.*

Criminal Procedure Code, section 4 (r)—Act No. XVIII of 1879 (Legal Practitioners Act), section 9 — Mukhtars — Authority of Mukhtar to practice in Criminal Courts.

A mukhtar is not entitled to practise generally and as of right in Criminal Courts, but can act only when he has received the permission of the Court to act in any particular proceeding.

THIS was an application by certain mukhtars practising within the limits of the Meerut Sessions Division asking that an order issued by the District Magistrate of Muzaffarnagar for the guidance of Subordinate Magistrates in that district, and based upon certain remarks made in an appellate judgment by the Additional Sessions Judge of Meerut, might be set aside. The District Magistrate's order as well as the passage in the Additional Sessions Judge's judgment upon which it was founded are quoted below in the order of KNOX, J.

Mr. *C. C. Dillon*, in support of the application, contended that it was not necessary for a mukhtar who had obtained a

* Miscellaneous No. 69 of 1907.

(1) (1905) I. L. R., 27 All., 691.

certificate from the High Court entitling him to practise to obtain permission from the Court concerned in respect of each case in which he wished to appear. The word 'mukhtar' in section 4(*r*) of the Code of Criminal Procedure meant a mukhtar who had not obtained such a certificate. Such persons only had to obtain permission before they could appear; but the section did not contemplate mukhtars who had obtained a certificate under the Legal Practitioners Act. He referred to *Imperatrix* v. *Sheo Ram Gundoo* (1).

Mr. *A. E. Ryves*, (as *amicus curiæ*) in support of the order of the Magistrate, submitted that mukhtars could not rank with pleaders. In the draft of the present Code of Criminal Procedure the classing of mukhtars with pleaders was at one time contemplated, but the bill when passed was altered. This indicated that mukhtars must obtain permission from the Court in respect of each case individually. They could not oust a more highly qualified class of men, namely, the vakils and pleaders. There was no order prohibiting mukhtars from practising, nor was there any allegation that any specified mukhtar had been refused permission to appear. The order was perfectly legal and not a subject for revision.

KNOX, J.—The Additional Sessions Judge of Meerut in an appeal pending before him entered in his judgment the following observation:—"All accused persons are of right entitled to be defended by a pleader and the definition of 'pleader' in the Criminal Procedure Code does not include mukhtars; special permission of the Court has to be obtained for the representation of an accused person by other than a pleader; but Magistrates seem to take it as a matter of course that mukhtars should appear. While this is so, the standard of morals in the Courts can never improve. I dismiss this appeal and order that a copy of this judgment be sent to the District Magistrate for information." Upon receipt of this the District Magistrate of Muzaffarnagar issued the following order:—"Mukhtars can appear under section 4 (*r*) (1) only with the Court's permission. Draw all Courts' attention to this section."

(1) (1881) I. L. R. 6, Bom., 14.

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IN THE MATTER OF THE PETITION OF ANANT RAM.

It is contended before us that both these orders, namely, the order of the Additional Sessions Judge of Meerut and the order of the District Magistrate of Muzaffarnagar, were made without jurisdiction. This contention is raised by certain mukhtars of the Muzaffarnagar district, who are represented in this Court by learned counsel. The learned counsel in opening his case boldly claimed for his clients the right to appear whether with or without permission in Criminal Courts. His argument was that the words contained in the clause of the Code of Criminal Procedure quoted above did not refer to a mukhtar who has obtained a certificate from this Court authorizing him to practise in Criminal Subordinate Courts. He wished us to read the words "appointed with the permission of the Court to act in such proceeding" as qualifying the immediately preceding words "other persons" and as not referring or qualifying the words "any mukhtar." In the first place, if that had been the intention of the Legislature, we should have expected to find words "any mukhtar" placed in group (1), clause (*r*), and not, as they are, in group (2) of that clause. There is a still further difficulty which is an insuperable one, and that arises out of the provisions of section 9 of Act No. XVIII of 1879. This section defines the powers given to mukhtars on enrolment and provides that a person so enrolled "may practise as a mukhtar in any such Civil Court and any Court subordinate thereto and may, subject to the provisions of the Code of Criminal Procedure, 1882, appear, plead and act in any such Criminal Court and any Court subordinate thereto." The language here used shows that the Legislature intended to draw, and did draw, a distinction between the privileges of a mukhtar when practising in a Civil Court and his privileges when practising in a Criminal Court. In the latter case those privileges are subject to the provisions of the Code of Criminal Procedure, 1882, that is to say, including and in addition to other provisions, the provision that he can only act when he has received the permission of the Court to act in a particular proceeding. The history of the genesis of this provision in clause (*r*) confirms the view we take of the intention of the Legislature. The learned Government Advocate pointed out that when Act No. V of 1898 was still in the stage of a bill and before the Legislative Council, the draft

proposed to confer upon mukhtars the very privileges which are contended for here. But when the bill passed into law, the provisions which had prevailed under Act No. X of 1882 were replaced in Act No. V of 1898 without any change. All that the learned Additional Sessions Judge has done in his judgment is to draw the attention of the Magistrate subordinate to him to clause (*r*) of section 4 of Act No. V of 1898 intimating that these provisions apply to mukhtars holding certificates. The District Magistrate has done nothing more than to draw the attention of the subordinate Courts to the subject. We cannot say that in either order the Courts concerned acted without jurisdiction or contrary to law.

BANERJI, J.—I entirely agree. At the same time I am of opinion that if permission to act in a criminal case be asked for by a mukhtar who holds a certificate empowering him to practise in Criminal Courts, such permission should not be refused except for valid reasons and having regard to the circumstances of the particular case and of the particular mukhtar who applies for permission.

RICHARDS, J.—I also agree in what has been said by Sir George Knox and Mr. Justice Banerji. I think, in considering whether or not permission should be granted to a mukhtar who has qualified himself with the certificate provided by the Legal Practitioners Act, the Court ought to consider every application on its merits. Mukhtars cannot expect or claim all the privileges of vakils and advocates who have had to qualify themselves after much study and expense. This is what is really claimed on behalf of the present applicants. On the other hand there must be many occasions when the difficulty of obtaining the services of an advocate or pleader will be very great, and perhaps, having regard to the means of an accused person and distance, practically impossible. All these are matters which I think the Court might fairly take into consideration when granting or withholding permission to a mukhtar holding the certificate mentioned in the Legal Practitioners Act XVIII of 1879.